



Independent Pricing and Regulatory Tribunal

# **Application for variation to licence conditions from Sydney Desalination Plant Pty Limited**

**IPART's report to the Minister**

December 2011



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## 1 Background

Sydney Desalination Plant Pty Limited (SDP) is the holder of a network operator's and a retail supplier's licence granted under the *Water Industry Competition Act 2006* (WICA) (**Appendix A**). The licences are in relation to the Sydney desalination plant located at Kurnell.

SDP has constructed and commenced maintenance and operation of a desalination plant, including a water storage tank, pumping station and twin inlet/outlet tunnels, located on the Kurnell peninsula and the seawater intake and outlet structures located up to 300m offshore on the bed of the Tasman Sea.

SDP is producing water to a standard suitable for drinking water purposes.

SDP has nominated Veolia Water Australia Pty Ltd (Veolia Water) as a third party to the licence to operate and maintain the desalination plant and pumping station. SDP has a 20 year contract with Veolia Water to undertake these activities. Veolia Water were also party to the design and construct contract awarded to the consortium named Bluewater.

On 15 September 2011 IPART received an application for a variation to the SDP network operator's licence (licence number 10\_010). The variation sought to amend the network operator's licence to include the 18 kilometre desalination delivery pipeline (the pipeline) on the SDP network operator licence (**Appendix B**).

SDP made a request on 9 December 2011 for a minor change to a licence condition to make it more consistent with the Metropolitan Water Plan. Further SDP sought an amendment to a definition so it is more consistent with its operation and maintenance contract with Sydney Water.

In accordance with the Act, this report sets out IPART's consideration of the application to vary the licence, in particular how the licensing criteria/ principles have been met. This report concludes with a recommendation to vary the licence accordingly.

## 2 Legislative framework

The Minister may at any time vary the existing conditions of a licence or impose new conditions, either of his motion or on the application of the licensee.<sup>1</sup> Under the *Water Industry Competition (General) Regulation 2008* (the General Regulation), an

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<sup>1</sup> See section 15, *Water Industry Competition Act 2006*.

application for a variation of licence conditions must be in such form as the Minister may approve, accompanied by such fee as the Minister may determine and be lodged at the office of IPART.<sup>2</sup> The Minister has not yet approved or determined a form or a fee for licence variations.

The General Regulation also sets out the information required and the matters to be considered in relation to an application for a variation. An application for a licence variation must be accompanied by such information as is set out in clause 6 (network operator's licence) of the General Regulation "to the extent only to which they are relevant to the application" – the clauses are set out in full in **Appendix C**.<sup>3</sup> This includes a requirement for the application to address each of the matters referred to in section 10(4)(a)-(e) WICA, as are relevant to the application.

The matters set out in section 10(4) WICA are:

- (a) that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise,
- (b) that the applicant has the capacity to carry out those activities in a manner that does not present a risk to public health,
- (c) that the applicant has made, and will continue to maintain, appropriate arrangements with respect to insurance,
- (d) in the case of an application for a licence to supply water, that, if such a licence is granted, sufficient quantities of the water supplied by the licensee will have been obtained otherwise than from a public water utility,
- (e) such matters as are prescribed by the regulations [namely, that the applicant has the capacity to carry out the activities that the licence (if granted) would authorise in a manner that does not present a significant risk of harm to the environment],
- (f) such other matters as the Minister considers relevant, having regard to the public interest.

In considering the conditions to which a licence should be subject in determining an application for a licence variation, regard must also be had by the Minister to the principles set out in section 7(1) WICA<sup>4</sup>, namely:

- (a) the protection of public health, the environment, public safety and consumers,
- (b) the encouragement of competition in the supply of water and the provision of sewerage services,
- (c) the ensuring of sustainability of water resources
- (d) the promotion of production and use of recycled water.

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<sup>2</sup> See clause 14, *Water Industry Competition (General) Regulation 2008*.

<sup>3</sup> See clause 14(2) and (3), *Water Industry Competition (General) Regulation 2008*.

<sup>4</sup> See clause 14(4), *Water Industry Competition (General) Regulation 2008*.

### 3 Assessment of application

IPART's assessment of the requested variations and its recommendations to the Minister are set out below.

We note that, at least in the short term until the SDP is refinanced, the pipeline will be continued to be operated and maintained by Sydney Water. As a consequence, the current regulatory arrangements (including the requirements set out in Sydney Water's Operating Licence) will continue to apply to the pipeline.

While Sydney Water's Operating Licence continues to apply, a variation to the SDP's licence is not strictly required. Despite this we understand that the variation is being sought as part of the refinancing of the desalination plant and the associated infrastructure (including the pipeline).

While the pipeline continues to be operated by Sydney Water we consider that the majority of licensing criteria for approval of the variation of the SDP licence have been met. We have therefore limited our analysis to the following matters.

#### 3.1 Licensing Criteria pursuant to Section 10(4) Water Industry Competition Act 2006

##### **Does SDP have the technical and organisational capacity to operate the pipeline? (section 10(4)(a))**

SDP has entered into a service agreement with Sydney Water to continue to operate and maintain the pipeline. It is understood that this arrangement will continue until such time as the infrastructure is refinanced.

SDP is therefore relying on Sydney Water's technical and organisational capacity to operate the pipeline. We acknowledge that Sydney Water is one of the leading public water utilities in Australia and is fully capable of operating the pipeline.

In these circumstances, it is our usual practice to name the third party who services are being relied upon to be named as an authorised person within a WICA licence. In this case, we do not intend to recommend Sydney Water as an authorised person. Sydney Water will continue to operate the pipeline for SDP under its own operating licence and therefore it is not essential for this utility to be named in SDP's network operator licence. Instead, we have recommended a new licence obligation that will require SDP to provide prior notification to IPART if Sydney Water ceases to operate and maintain the pipeline. Further, if Sydney Water ceases to provide this service, SDP will be required to outline what new arrangements they have made to operate and maintain the pipeline.

Currently Veolia Water Australia (Veolia Water) is named as an authorised person within SDP's operating licence. SDP relied on Veolia Water's experience and

expertise to operate the desalination plant. In the application to vary the network operator licence, SDP has only nominated Sydney Water to operate and maintain the pipeline. As a consequence, we have not extended Veolia Water's authorisation within the licence to include the operation of the pipeline.

**Does SDP have the capacity to carry out those activities in a manner that does not present a risk to public health (section 10(4) (b))**

SDP is relying on Sydney Water to operate and maintain the pipeline. We consider that Sydney Water has the capacity to manage the risk to public health under its operating licence. Sydney Water is audited annually and historically has achieved excellent performance in the audits.

We have discussed this matter with NSW Health. NSW Health has advised that in the event of a new operator of the pipeline or if Sydney Water was to operate this pipeline under SDP's WICA licence, the current regulatory arrangements with NSW Health would need to be replicated in SDP's Water Quality Plan. The regulatory arrangements include provision of water monitoring data and appropriate incident notification requirements.

Since SDP and Sydney Water have stated that Sydney Water will continue to operate the pipeline under Sydney Water's operating licence, NSW Health has advised that no changes to the current regulatory arrangements are required.

We conclude that this variation request does not present an increased risk to public health.

**Does SDP continue to maintain, appropriate insurance arrangements? (section 10(4)(c))**

SDP provided a Certificate of Currency that demonstrates that Sydney Water (including Sydney Desalination Plant Pty Limited) is a member of the NSW Treasury Managed Fund which provides insurable risk protection in accordance with the TMF Contract of Coverage.

Sydney Water is the named agency with the TMF, and its coverage includes wholly owned subsidiaries such as SDP. This means the desalination plant and associated infrastructure is insured by the TMF.

We note that Sydney Water's (including SDP's) insurance coverage includes legal liability inclusive of directors' & officers' liability, public liability, product liability and professional indemnity, as well as comprehensive motor vehicle coverage and property coverage. The insurance covers legal liability to any third party arising out of Sydney Water's (including SDP's) operations worldwide. The transfer of the pipeline between Sydney Water and SDP therefore does not impact this insurance arrangement which we have previously assessed as adequate.

### 3.2 Licensing principles pursuant to Section 7(1) Water Industry Competition Act 2006

One proposed amendment involves restricting the supply of desalinated water to Sydney Water's area of operation when Sydney's overall drinking water storage falls below 70%. This restriction would continue until the storage level reach 80%. The "70/80 rule" is the operating regime detailed in the Metropolitan Water Plan to ensure the security of water supply for the Sydney Metropolitan area. SDP has requested this amendment following discussions with the Department of Finance and Services.

This change may be considered to be inconsistent with the licensing principle of "encouragement of competition in the supply of water". However, it is not inconsistent with the new licensing principles in the Amendment Bill for WICA, which will be proclaimed early in 2012. The new principle is "the promotion of policies set out in any prescribed water policy document". The Metropolitan Water Plan is defined as prescribed water policy document in the Amendment Bill. Further, the proposed supply restriction is similar to current arrangements within SDP's retail supply licence (SDP as a retailer can only supply within Sydney Water's area of operation).

In all other respects we considered the principles under section 7(1) WICA have been met.

## 4 Recommendations

Having regard to the information provided, the matters under section 10(4) and the licensing principles in section 7(1), IPART supports the proposed amendment.

IPART recommends that the Minister amend SDP's network operator's licence no. 10\_010 by signing the Notice of Licence Amendment.

The Minister should advise IPART of his decision. IPART will then advise the licensee, SDP, as soon as possible. If the variations are approved, IPART will publish the amended licences on its website and update the WICA public register accordingly.





**Appendices**



## A Network operator's licence no 10\_010



## **B SDP application for variation to licence no 10\_010**



## C Clauses 6 Water Industry Competition (General) Regulation 2008

### 6 Applications for licences

(1) An application for a network operator's licence for water infrastructure must address each of the matters referred to in section 10 (4) (a)–(e) of the Act that is relevant to that kind of licence and must include, or be accompanied by:

- (a) information as to the activities for which the licence is sought and the area within which those activities are proposed to be carried out, and
- (b) a comprehensive statement as to:
  - (i) the events and circumstances that could adversely affect the applicant's ability to carry out the activities for which the licence is sought, and
  - (ii) the probability of the occurrence of any such event or circumstance, and
  - (iii) the measures to be taken by the applicant to prevent or minimise the likelihood of any such event or circumstance, and
- (c) a comprehensive statement as to the arrangements that the applicant has made, or proposes to make, in relation to:
  - (i) the design, construction, operation and maintenance of the infrastructure, including particulars as to the life-span of the infrastructure, the system redundancy built into the infrastructure and the arrangements for the renewal of the infrastructure, and
  - (ii) the continued safe and reliable performance of the infrastructure, and
  - (iii) the continuity of water supply, and
  - (iv) alternative water supplies when the infrastructure is inoperable, and
  - (v) the maintenance, monitoring and reporting of standards of service, and
- (d) a comprehensive statement, in relation to the water supplied from the infrastructure, that specifies:
  - (i) if the water so supplied is drinking water, how the 12 elements of the framework for the management of drinking water quality, as detailed in the Australian Drinking Water Guidelines, have been addressed and will be implemented and maintained, and
  - (ii) if the water so supplied is non-potable water, how the 12 elements of the framework for the management of recycled water quality and use, as detailed in the Australian Guidelines for Water Recycling, have been addressed and will be implemented and maintained and, having regard to those guidelines, the purposes for which the water may be used and the purposes for which the water may not be used, and
- (e) any other information that will be required for inclusion in the Register of Licences.